



POLICE DEPARTMENT

September 3, 2019

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In the Matter of the Charges and Specifications : Case No.
- against - : 2016-15804
Police Officer Dalmin Vasquez :
Tax Registry No. 943915 :
Detective Borough Bronx :

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Eric Sanders, Esq.
The Sanders Firm, P.C.
30 Wall Street, 8th Floor
New York, NY 10005

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Police Officer Dalmin Vasquez, while off-duty and in the confines of [REDACTED], New York, on or about May 11, 2016, failed to take police action during the commission of a crime, to wit: said Police Officer failed to intervene to stop an assault on a minor child known to the Department. (*Dismissed*)

P.G. 202-21, Page 1, Paragraph 8

POLICE OFFICER

2. Said Police Officer Dalmin Vasquez, while off-duty and in the confines of [REDACTED], New York, on or about May 11, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer, upon becoming aware, failed to act, prevent or intervene in a situation that was likely to be injurious to the physical, mental or moral welfare of a minor child, who was less than seventeen years old.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT – PROHIBITED CONDUCT

3. Said Police Officer Dalmin Vasquez, while off-duty and in the confines of [REDACTED], New York, on or about May 11, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer failed to perform duties imposed upon him by law and by nature of his title as a Police Officer. (*Dismissed*)

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT – PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 31 and August 6, 2019. Respondent, through his counsel, entered a plea of Not Guilty to the one remaining charge. The Department called NYPD Sergeant Carlos Escobar, Investigator Joseph Lofrese of the New York State Police, "Person A,"¹ and Person B as witnesses in its case-in-chief, and Sergeant Mark Prestigiacomo of the New York State Police for rebuttal. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty, and recommend that he forfeit fifteen (15) suspension days already served on

[REDACTED]

pre-trial suspension, and that fifteen (15) suspension days previously served be restored to Respondent.

ANALYSIS

On the night of May 10, 2016, Respondent, who was off-duty at the time, was studying for the sergeant exam at the home of a colleague [REDACTED]. While studying, Respondent received a call from Person B asking him to come to Location A because she was having difficulties with [REDACTED], Person A, [REDACTED]. He interrupted his studying and went to Location A.

Upon arrival, Respondent observed Person A, naked, sitting on the living room floor. Person B and Person A were screaming. Respondent learned that Person A was "at it again," engaging in inappropriate social media behavior, and that her mother had disciplined her. Despite also noticing that Person A's face was red, and that she had what appeared to be a cut on her lip, Respondent remained at Location A only for a minute or two, then returned to his friend's house to continue studying. Respondent is charged with having failed to intervene on behalf of Person A. Person A testified that her mother yelled at her and hit her with her hands, but she could not recall if her mother also struck her with an object. As a result of being hit, Person A suffered a swollen lip; she could not recall if there also was a cut to her lip. According to Person A, Person B also told her to take off her clothes, which she did. Respondent was not present during this incident, but came to Location A afterward, and told her to go upstairs and get changed.

Person A denied that her mother kicked her out of the house. After Respondent left, Person A, who still was naked, walked to her neighbors' house where the police were called. Person A was taken to the emergency room, where she was interviewed by Investigator Lofrese. (Tr. 67-72, 74-

Investigator Joseph Lofrese of the New York State Police testified that when he first observed Person A at the neighbor's house, she was shaken up and crying. The girl had visible red markings in her neck area and on her face, with swelling by her upper lip. Person A told him that after hitting her several times with an open hand, her mother also struck her with a wooden spoon: the spoon accidentally hit Person A in the face as she was turning, instead of in the back of the neck, which was her mother's usual target when the girl was in trouble. Person B then struck Person A several more times with her hand and with the spoon. Person A also informed Investigator Lofrese that her mother did tell her to get out of the house. (Tr. 96-98, 100)

Person B [REDACTED] testified that she did discipline Person A for sending inappropriate texts to boys. She acknowledged that she struck her daughter in the face with a wooden spoon, and told her to take off her clothes. Person B was "at her wit's end," and called Respondent; he arrived at Location A a couple of minutes later. At that point Person A was red in the face, but Person B claimed she did not see a cut on Person A's lip. She told Respondent that Person A was "up to her old tricks again." According to Person B, Respondent tried to calm them down; he told Person A to go upstairs, and told Person B to go clean up the kitchen and that they would talk later. Person B denied telling Person A to leave the house. (Tr. 80-87, 89-90)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respondent testified [REDACTED]

[REDACTED]

the night of the incident, Respondent was across the street with an NYPD colleague studying for the sergeant exam. At about 1930 hours, he received a call from Person B; she was upset, and urged him to come to Location A. Respondent arrived at Location A a minute later, and observed Person A sitting on the floor naked. Person B was crying hysterically, and told him that Person A was "at it again," referring to her inappropriate social media behavior. The scene was "chaotic," with Person B and Person A both screaming at him. In an effort to calm the situation, Respondent told Person A to put some clothes on and go up to her room and told Person B to go clean up.

According to Respondent, this was the first time the disciplining of Person A turned physical. He described seeing Person A naked and hysterical in the living room as an "isolated incident." Person A was red in the face and may have had a cut on her lip, but Respondent did not observe anything that would require medical attention. Respondent testified that he did not have ample time to find out what exactly happened between Person B and Person A since he remained at the house less than two minutes before returning to his friend's home, where he continued studying until around 2130 hours. Respondent denied telling Sergeant Prestigiacomo, a state trooper, that he saw Person A come outside the house naked and sit on the stoop. (Tr. 122-23, 126-27, 130-31, 135)

Sergeant Mark Prestigiacomo of the New York State Police testified that he interviewed Respondent [REDACTED] at about 2200 hours on the night of the incident. Respondent, who was cooperative, told him that after Person B called him [REDACTED], he learned that she had struck Person A.

Sergeant Prestigiacomo could not remember if he specifically asked Respondent about injuries to Person A, but he did recall that Respondent stated that he observed Person A with a cut on her lip and bruising on her arm. Respondent told him that he informed Person B that he was leaving the house because he did not want to deal with the situation at that time. Respondent also said that Person A, who was naked, followed him outside and sat on the stoop while Person B remained inside the

Specifications 1 and 3 were dismissed by the Department Advocate prior to trial. Specification 2 charges Respondent with failing to intervene on behalf of terson A after becoming aware that she was in a situation likely to be injurious to her welfare. It is undisputed that Respondent was not present for the altercation between mother and daughter. Nevertheless, he did come to Location A for one-to-two minutes and observed the situation while it was still chaotic. At issue is whether Respondent's failure to act based on those observations constituted misconduct.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Here, in contrast, the credible evidence has established that terson A's [REDACTED] [REDACTED], with her hands and with a wooden spoon, causing injuries, including a cut to the lip. terson B also had her daughter strip naked. Even though Respondent was not present when this occurred, he was called to Location A by frantic terson B; to his credit, he arrived at Location A just a minute later, and observed [REDACTED] still screaming. Respondent learned that terson B had [REDACTED], and Respondent saw the [REDACTED], on the floor, very upset. I find that Respondent observed that terson A had a cut to her lip and bruises to her arm, based on Sergeant Prestigiacomo's detailed and credible testimony regarding his conversation with Respondent that same evening. This tribunal was troubled by Respondent's testimony that he did not have

ample time" to gather further details as to what exactly had happened; he did not have "ample time" because he chose to stay for a mere *one-to-two minutes* before returning to his friend's home to continue studying. The only preventative step he took before leaving was to tell Person A to go upstairs and get dressed, and Person B to go clean up, and then he departed without making sure they even followed through.

As Respondent, himself, acknowledged, this was an isolated incident, more physical than other family disputes that had occurred in the past. As such, it required further action on Respondent's part. Nevertheless, Respondent failed to intervene in a meaningful way to secure the situation and protect the child against further danger. Indeed, after Respondent walked out, Person A followed him outside and sat on the stoop, naked, which was an indication that the situation was still precarious; again, I credit Sergeant Prestigiacomo's testimony that Respondent admitted to seeing this as well. Rather than take action to protect the well-being of this [REDACTED], as expected of a member of service, Respondent continued on his way to study for an exam.

This tribunal is mindful of the cautionary note sounded by defense counsel [REDACTED]

[REDACTED]

[REDACTED]

Rather, the pressing concern here is Respondent's failure, as a member of service, to adequately intervene on behalf of a [REDACTED] [REDACTED] who was on the floor naked, screaming, with visible injuries from having just been beaten. The credible evidence has established that Respondent engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department in that he failed to act, prevent, or intervene on Person A's behalf in a situation that was likely to be injurious to the [REDACTED] physical, mental, or moral welfare. Accordingly, I find Respondent guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 10, 2007. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no disciplinary record. He has received 19 medals for Excellent Police Duty, and 3 medals for Meritorious Police Duty.

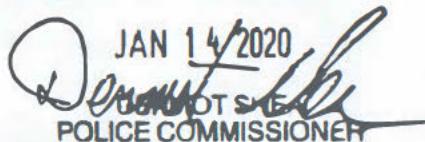
Respondent has been found guilty of failing to intervene on behalf of a [REDACTED]. On the one hand, this tribunal recognizes that Respondent [REDACTED] [REDACTED] was not even present when the child was being disciplined. [REDACTED]

[REDACTED] Rather, the concern here is that Respondent, a member of service, failed to take appropriate steps to secure the safety and well-being of a [REDACTED] who was in obvious need of police intervention, and some accountability is necessary. Taking into account the totality of the circumstances and issues in this matter, including Respondent's strong record with the Department, I recommend that Respondent forfeit fifteen (15) days already served on pre-trial suspension, and that fifteen (15) suspension days previously served be restored to Respondent.

Respectfully submitted,


Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED


JAN 14 2020
DO NOT SIGN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DALMIN VASQUEZ
TAX REGISTRY NO. 943915
DISCIPLINARY CASE NO. 2016-15804

Respondent was appointed as a police officer on January 10, 2007, after previously serving as a school safety agent. On his last three annual performance evaluations, he received a 3.0 overall rating of "Competent" for 2016, and a 4.0 overall rating of "Highly Competent" for 2014 and 2015. He has received 19 medals for Excellent Police Duty and three medals for Meritorious Police Duty.

[REDACTED]

Respondent has no disciplinary record. He was suspended from May 14, 2016 through June 12, 2016 in connection with the instant matter. On September 19, 2016, Respondent was placed on Level 2 Discipline Monitoring for receiving charges and specifications in the instant matter; monitoring remains ongoing.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials